

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MAURICE A. CHINNERY,

Plaintiff,

-against-

NEW YORK STATE OFFICE OF CHILDREN
AND FAMILY SERVICES and ROGER
RASCOE, Family Director,

Defendants.
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DATE FILED: 8/22/11

**MEMORANDUM DECISION
AND ORDER**

10 Civ. 882 (DAB) (GAY)

On or about December 22, 2009, plaintiff Maurice Chinnery filed the instant *pro se* complaint for employment discrimination. The complaint includes numerous documents attached as exhibits. On or about April 13, 2011, defendants filed a motion to dismiss. Said motion has been referred to the undersigned for a Report and Recommendation to the Honorable Deborah A. Batts.

On or about June 3, 2011, the Court received plaintiff's opposition to defendants' motion to dismiss. Plaintiff's opposition consists primarily of various additional documents which, plaintiff alleges, support his assertions of discrimination and retaliation. On or about June 23, 2011, defendants submitted a reply in response to plaintiff's opposition.

The Court construes plaintiff's opposition as a motion to amend the complaint to incorporate and attach the additional documents submitted in opposition to the motion to dismiss. Pursuant to Rule 15(a) of the Federal Rules of Civil Procedure ("FRCP"), leave to amend a complaint "shall be freely given when justice so requires." It is within the sound discretion of the court whether to grant leave to amend. See Foman v. Davis,

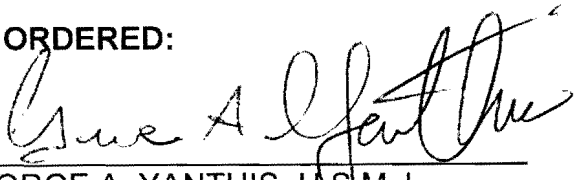
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371 U.S. 178, 182 (1962). Here, under the circumstances, the Court grants the motion. Accordingly, plaintiff's complaint is deemed to include the documents attached to his opposition to the motion to dismiss.

In light of the foregoing, defendants may submit additional argument in support of their motion to dismiss, if they so choose, by August 31, 2011.

Dated: August 19, 2011
White Plains, New York

SO ORDERED:



GEORGE A. YANTHIS, U.S.M.J.